

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA

V.

VERNON FARTHING, III

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NO.5:17-CR-00380-DAE

TRIAL MEMORANDUM:

[DEFENSE ENTITLED TO EXPOSE SUBTLE, UNCONSCIOUS DESIRE TO CURRY FAVOR]

Defendant has a constitutional right to cross-examine a witness regarding his motive to curry favor and avoid prosecution, even if same only affects that witness's subconscious desire to testify favorably for the prosecution:

‘It is especially important in a case where a witness or an accomplice may have a substantial reason to cooperate with the government that a defendant be permitted to search for an agreement between the government and the witness.’ *United States v. Crumley*, 565 F.2d 945, 949 (5th Cir. 1978). **Whether such a deal existed is not crucial.** *United States v. Mayer*, 556 F.2d 245, 249 (5th Cir. 1977). **What counts is whether the witness may be shading his testimony in an effort to please the prosecution.** ‘A desire to cooperate may be **formed beneath the conscious level**, in a manner not apparent even to the witness, but **such a subtle desire to assist the state nevertheless may cloud perception.**’ *Burr v. Sullivan*, 618 F.2d 583, 587 (9th Cir. 1980).

Greene v. Wainwright, 634 F.2d 272, 276 (5th Cir. 1981)¹

Respectfully submitted,

By: /s/ Gerald H. Goldstein
Gerald H. Goldstein
Attorney for Vernon Farthing

¹ See also *Ortiz v. Yates*, 704 F.3d 1026 (9th Cir. 2012) [subtle motivations include the fear that inconsistent statements may result in subsequent prosecutions for false statements, *cf.* 18 U.S.C. § 1001]; *Alvarez v. Ercole*, 763 F.3d 223 (2d Cir. 2014) [unpursued lines of investigation]; *Blackston v. Rapelje*, 780 F.3d 340 (6th Cir. 2014) [evidence that witness recanted prior testimony]; *Olden v. Kentucky*, 488 U.S. 227 (1988) [motive to lie for loved ones]; *Slovik v. Yates*, 556 F.3d 747 (9th Cir. 2009) (evidence witness is currently on probation; evidence that witness has lied in a sworn statement). This case turns on Government witness Galindo's credibility. Denying Defendant Farthing an opportunity to confront and cross-examine Galindo regarding these motives to fabricate will cause irreparably harm to his ability to present a defense.